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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/993,233	11/16/2001	Jess E. Croya	PAY 001	6880
7590	03/02/2004	EXAMINER		
Judy Jarecki-Black, Ph.D., J.D. 467 Ware Road Carnesville, GA 30521			GONZALEZ, MADELINE	
		ART UNIT	PAPER NUMBER	
		2859		

DATE MAILED: 03/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 09/993,233	Applicant(s) CROYA ET AL.
	Examiner Madeline Gonzalez	Art Unit 2859

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

## **Disposition of Claims**

4)  Claim(s) 1-5 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1-5 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on 29 March 2003 is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_ .

4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_ .

5)  Notice of Informal Patent Application (PTO-152)

6)  Other: \_\_\_\_\_ .

**DETAILED ACTION**

In response to applicant's amendment dated January 9, 2004

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1, 4 and 5 are rejected under 35 U.S.C. 102(e) as being anticipated by Odachowski (U.S. 6,651,354).

Odachowski discloses a tape measure 10, as shown in Figs. 6a and 6b, having:

- a housing 12 having a top wall and a bottom wall separated by a first spaced end wall and a second spaced end wall;
- an opening 14 disposed in said first spaced end wall;
- a tape 16 having a top side 18 and a bottom side 20, said tape 16 comprising an extendable length of substantially strong and durable, yet bendable material retractably disposed within said housing 12, said tape 16 including an attachment end and a terminal end 26;

- said tape 16 being normally, retractably stored in said housing 12 with said attachment end fixedly secured within said housing 12 and said terminal end 26 protruding through said opening 14 and being at all times exteriorly accessible of said opening;
- said terminal end 26 having an upper flange 36 and a lower flange 38, said upper flange 36 extending upwardly and said lower flange 38 extending downwardly from said tape 16 and positioned substantially perpendicular to said tape 16;
- said top side 18 having graduated indicia 30 and said bottom side 20 having graduated indicia 32 comprising a measuring scale extending along substantially the entire length of said tape 16, said indicia 30 and 32 having an identical point of origin, said point originating from the terminal end 26;
- wherein the top side 18 and the bottom side 20 of said tape 16 are planar; and
- wherein the top side 18 and the bottom side 20 of said tape 16 are arcuate in cross section.

*Claim Rejections - 35 USC § 103*

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Odachowski (U.S. 6,651,354) in view of Knispel et al. (U.S. 5,210,956) [hereinafter Knispel].

Odachowski discloses all the subject matter claimed above in paragraph 2 with the exception of an attachment clip.

With respect to the attachment clip: Knispel discloses a tape measure, as shown in Fig. 2, having an attachment clip. Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to provide an attachment clip as taught by Knispel, to the tape measure disclosed by Odachowski in order to securely mount the tape measure to a user's belt.

6. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Odachowski (U.S. 6,651,354) in view of Quenot (U.S. 3,004,346).

Odachowski discloses all the subject matter claimed above in paragraph 2 with the exception of the specific increments of the indicia.

With respect to the specific increments of the indicia: Quenot teaches the use of a tape 1 having scales on the top and bottom sides of the tape 1, said scales are marked in 1/16-inch increments. The specific increments of the indicia claimed by applicant, i.e., 1/16-inch increments, absent any criticality, is only considered to be the “optimum” increments of the scale disclosed by Odachowski that a person having ordinary skill in the art would have been able to determine using routine experimentation based, among other things, on the desired accuracy, manufacturing costs, etc. See In re Boesch, 205 USPQ 215 (CCPA 1980). Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to provide a scale marked in 1/16-inch increments as taught by Quenot in order to be able to make more accurate measurements.

***Response to Arguments***

7. Applicant's arguments with respect to claims 1-5 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Salazar discloses a device having a measuring tape including indicia on the top and bottom surfaces, said indicia having an identical point of origin, and said measuring tape having a terminal end including an upper flange and a lower flange. Fizer and Anderson disclose devices having a measuring tape including indicia on the top and bottom surfaces, said indicia having an identical point of origin.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Madeline Gonzalez whose telephone number is (571) 272-2243. The examiner can normally be reached on Monday-Friday (8:00-5:30), alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego F.F. Gutierrez can be reached on (571) 272-2245. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MG



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